



LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL
CENTRO DE SERVICIOS LEGALES

122 Boylston Street
Jamaica Plain, Massachusetts 02130-2246
TEL: (617) 522-3003 • FAX: (617) 522-0715

November 9, 2018

Housing Court Clerk
Eastern Housing Court
Edward W. Brooke Courthouse
24 New Chardon Street, 3rd Fl.
Boston, MA 02114

RE: *GBM Portfolio Owner LLC v. Juliana Williams and Cezare Williams*
(18-SP-4424)

Dear Housing Court Clerk,

Enclosed please find the Defendant's Motion to Reconsider Defendant's Motion to Vacate the Default Judgment. Please schedule this matter for hearing at the Court's earliest convenience.

Please do not hesitate to call me with any questions you may have at 617-390-2592.

Sincerely,

Nicole Summers
Attorney and Clinical Instructor
617-390-2592
nsummers@law.harvard.edu

Cc: David Frye, Esq.

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

SUFFOLK, ss.

**HOUSING COURT DEPARTMENT
EASTERN DIVISION
DOCKET NO: 18H84SP004424**

**GBM PORTFOLIO OWNER LLC,
PLAINTIFF,**

v.

**JULIANA WILLIAMS AND CEZARE
WILLIAMS,
DEFENDANT.**

**MOTION TO RECONSIDER
DEFENDANT'S MOTION TO VACATE
THE DEFAULT JUDGMENT**

Pursuant to Mass. R. Civ. P. 60(b)(6), Defendant Juliana Williams ("Ms. Williams") hereby respectfully moves this Court to reconsider its Order dated November 5, 2018 denying her *pro se* Motion to Vacate the Default Judgment (hereinafter, the "Order"). Ms. Williams, who has lived at her home for forty years, never received the summons and complaint in this action and therefore failed to appear on the scheduled court date. Service was supposedly made at the defendant's last and usual abode and by first-class mail on Saturday, September 15, 2018, but Ms. Williams was home that day and never received any court papers. Ms. Williams also carefully and diligently reviews her mail and swears in her affidavit, attached hereto as Exhibit A, that she never received the summons and complaint in the mail. Ms. Williams has numerous meritorious defenses and counterclaims to this no-fault summary process action, including but not limited to breach of the warranty of habitability, interference with quiet enjoyment, retaliation, violations of G.L. c. 93A, and violation of the security deposit law. Ms. Williams satisfies the standard of showing a valid reason for not appearing in court and meritorious defenses to the action.

Additionally, when deciding whether to grant a motion to vacate a default judgment, Supreme Judicial Court and Appeals Court case law direct the trial court judge to apply their discretion toward using legal procedure as “the vehicle for determination of the issues on their merits,” *Berube v. McKesson*, 7 Mass. App. Ct. 426, 429 (1979), and to consider the interests of justice, including the degree to which the respective interests of the parties are affected. *See Owens v. Mukendi*, 448 Mass. 66, 71 (2006); *Parrell v. Keenan*, 389 Mass. 809, 815 (1983). These factors all weigh strongly in favor of granting Ms. Williams’s motion: Ms. Williams is an elderly and disabled woman who has lived in her home for forty years, her motion was filed promptly within two weeks of the default judgment, she has a substantial likelihood of prevailing in the case if it is decided on the merits, and she has paid use and occupancy for the month of November. While there is no apparent prejudice to the Plaintiff if the motion to vacate default judgment is granted, Ms. Williams would be seriously prejudiced were the judgment allowed to stand and she were deprived of the opportunity to have her case heard on the merits. For these reasons, Ms. Williams respectfully requests that the Court reconsider its Order and allow her motion to vacate the default judgment.

FACTS

1. Juliana Williams resides at 498 Norfolk Street, Apt. 203, Mattapan, Massachusetts (“her home” or “the property”). *See* Affidavit of Juliana Williams (“Williams Aff.”), ¶ 2, attached hereto as **Exhibit A**.
2. Ms. Williams has lived at her home for forty years. *Id.* at ¶ 3. She moved into her home in 1978. *Id.*
3. Ms. Williams is sixty-eight years old. *Id.* at ¶ 4. She has very limited mobility due to an injury she suffered at the property. *Id.* In April 2017, she tripped and fell on broken

granite on the pathway outside the property. *Id.* Since that time, her foot and leg have been seriously injured and her mobility has been extremely limited. *Id.*

4. Because Ms. Williams has such limited mobility, she very rarely leaves her home. *Id.* at ¶ 5. She only leaves her home to attend doctor's appointments or for other equally important matters. *Id.* Her son, Cezare Williams, comes to her apartment on Wednesdays and Fridays every week to check her mail, bring her groceries, and assist with other tasks around her home. *Id.*
5. Plaintiff commenced this summary process action with a Summons and Complaint entered in the Housing Court on September 24, 2018. *See* Summons and Complaint, attached hereto as **Exhibit B**. According to the return of service, the Summons and Complaint was left at Ms. William's home on September 15, 2018 and a copy was mailed first class to her that same day. *See id.*
6. Ms. Williams did not have a doctor's appointment on September 15, 2018, and thus is nearly certain that she was at home that day. *See* Williams Aff. at ¶ 6. She would have seen or heard if a constable knocked on her door, slid papers under her door, or posted anything on her door that day. *Id.* No constable or other person did so. *Id.* The summons and complaint was not delivered to her on that day nor any other day; she would have easily seen it had it been personally delivered. *Id.* Further, it is unclear how the constable would have entered the building to deliver the summons since the building is always locked. *Id.*
7. Ms. William's son, Cezare Williams, brings her the mail from her mailbox when he visits her on Wednesdays and Fridays. *Id.* at ¶ 7. She reviews her mail carefully. *Id.* She never received a summons and complaint for this case in the mail. *Id.*

8. The trial date listed on the summons and complaint was October 4, 2018. *See* Summons and Complaint, attached hereto as Ex. B. As Ms. Williams had not received the summons, she did not appear in court on the scheduled date and a default judgment entered on October 5, 2018.
9. Had Ms. Williams received the summons and complaint, she would have come to court on the scheduled date. *See* Williams Aff. at ¶ 8. She also would have immediately sought legal assistance, as she was previously represented by Greater Boston Legal Services on a different summary process case in 2016. *Id.* Because of that case, and because she is involved in ongoing negotiations with the Plaintiff led by a tenant association organized by City Life Vida Urbana, she is highly aware of the vulnerability of her tenancy and the importance of attending court. *Id.*
10. Ms. Williams first learned of the summary process case when she received a notice informing her of the default judgment from the Eastern Housing Court. *Id.* at ¶ 9. She filed a motion to remove the default on October 17, 2018. *See* Motion to Vacate Default Judgment, attached hereto as **Exhibit C**.
11. On November 5, 2018, this Court denied Ms. Williams' motion on the grounds that she did not have a valid reason for not attending court. *See* Order, attached hereto as **Exhibit D**.
12. Ms. Williams has numerous meritorious defenses and counterclaims to this action.
 - a. First, she has defenses and counterclaims for breach of warranty of habitability because she complained about bad conditions including, but not limited to defective walls, electrical outlets, and plumbing, leaking windows,

and inadequate heating, and the Plaintiff failed to make repairs. *See Williams Aff.* at ¶ 10(a).

- b. Second, she has defenses and counterclaims for interference with the right to quiet enjoyment because of the bad conditions mentioned above and because she is a tenant at will paying for utilities without a written agreement with the landlord requiring her to do so. *Id.* at ¶ 10(b).
- c. Third, she has a retaliation defense and counterclaim. This summary process action was initiated in retaliation for her complaints about bad conditions, for bringing a personal injury lawsuit against the Plaintiff for the injury to her foot and leg she suffered at the property, and for participating in organizing activities with City Life Vida Urbana. *Id.* at ¶ 10(c). Because she engaged in these protected activities within six months of the commencement of this summary process action, she is entitled to a presumption of retaliation. *Id.* at ¶ 10(c).
- d. Fourth, she has a security deposit claim. She paid a security deposit of \$225 when she first moved into the property, and she has never received interest on that deposit or a rent reduction. *Id.* at ¶ 10(d). She also has not received a receipt nor any information about where the deposit is being held. *Id.* at ¶ 10(d).
- e. Fifth, she has a last month's rent claim. Ms. Williams paid \$225 for last month's rent when she first moved into the property, and she has never received interest on that deposit or a rent reduction. *Id.* at ¶ 10(e).

- f. Sixth, she has a reasonable accommodation defense and counterclaim because she is disabled. *Id.* at ¶ 10(f). As described above, Ms. Williams has very limited mobility due to the injury to her foot and leg she suffered at the property. *Id.* at ¶ 10(f).
- g. Seventh, the Plaintiff is a large corporate landlord and each of the acts she alleged is unfair and deceptive in violation of G.L. c. 93A. *Id.* at ¶ 10(g).

STANDARD OF REVIEW

Mass. R. Civ. P. 60(b) allows a court to relieve a party from an order “[o]n motion and upon such terms as are just” for “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged...; or (6) any other reason justifying relief from the operation of the judgment.” Mass. R. Civ. P. 60.

“The exercise of power to grant relief from a [default] judgment rests within the sound discretion of the judge, which is to be applied toward the objective that legal procedure becomes the vehicle for determination of the issues on their merits instead of upon refinements of procedure.” *Berube v. McKesson*, 7 Mass. App. Ct. 426, 429 (1979). “Rule 60(b) is remedial in character and subject to a liberal interpretation and application in a situation where the mischief leading to the judgment occurs at the pretrial stage.” *Id.* Courts considering a motion to vacate default “may consider whether the moving party ‘has a meritorious claim or defense... whether extraordinary circumstances warrant relief... and ‘whether the substantial rights of the parties in the matter in controversy’ will be affected by granting the motion.” *Owens v. Mukendi*, 448

Mass. 66, 71 (2006), quoting *Parrell v. Keenan*, 389 Mass. 809, 815 (1983). “In essence, [R]ule 60(b) vests ‘power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.’” *Parrell*, 389 Mass. at 815, quoting *Klapprott v. United States*, 335 U.S. 601, 615 (1949).

ARGUMENT

Massachusetts law strongly supports removing the default judgment against Ms. Williams. First, Ms. Williams satisfies the standard for removal of the default because she had a valid reason for not attending court and she has meritorious defenses to the summary process complaint. Ms. Williams has submitted an affidavit in which she swears that her only reason for not attending court was that she never received the summons and complaint. *See Williams Aff.* at ¶¶ 5-9, Ex. A. Ms. Williams is nearly always at home, leaving only to attend doctor’s appointments or for other equally important matters, and she is nearly certain that she was home on the day the summons and complaint was allegedly served, Saturday, September 15, 2018. *See id.* at ¶¶ 5-6. She did not see or hear a constable or anyone else knock on her door, slide papers under her door, or post papers on her door. *See id.* at ¶ 6. At no time on September 15, 2018 or on any other day did she see the summons and complaint anywhere at her home. *See id.* She also carefully reviews her mail and is certain that she did not receive a summons and complaint in the mail. *See id.* at ¶ 7. Ms. Williams is highly aware of the vulnerability of her tenancy and the importance of attending court dates, and she would never have missed her court date had she received notice. *See id.* at ¶ 8.

The sworn statements in Ms. Williams’s affidavit are sufficient to refute the presumption of proper service established by the constable’s return of service. A constable’s return of service is only *prima facie* evidence of proper service “and does not warrant the denial of the motion to

vacate.” *Fleishman v. Stone*, 57 Mass. App. Ct. 916, 916 (2003). Where a defendant submits sworn statements concerning lack of notice, the burden shifts to the plaintiff to controvert those statements, and where it does not do so, the defendant is entitled to relief from the default judgment. *See Farley v. Sprague*, 374 Mass. 419, 425 (1978); *Bronstein v. Lucek*, 1992 Mass. App. Div. 5, *1. The Plaintiff here has submitted no evidence refuting Ms. Williams’s statements that she did not receive service. Thus, Ms. Williams has demonstrated that she has a valid reason for failing to appear in court, and is entitled to relief from the default judgment because she has numerous meritorious defenses and counterclaims. *See Williams Aff.* at ¶ 10, Ex. A.

Second, the interests of justice weigh heavily in favor of granting Ms. Williams’s motion to vacate the default judgment. The Supreme Judicial Court and the Appeals Court have made clear that courts are to consider the interests of justice when deciding a motion to vacate default judgment. *See Parrell*, 389 Mass. at 815 (“[i]n essence, rule 60(b) vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice”); *Berube*, 7 Mass. App. Ct. at 429 (“rule [60(b)] has been said to contemplate an equitable balancing of the interests in determining the merits of a motion brought under its provision”). Massachusetts law has also made clear that in balancing the interests involved in vacating a default judgment, courts should take into account that the law generally disfavors such judgments. *See id.*; *Cicchese v. Tape Time Corp.*, 28 Mass. App. Ct. 72, 74 (1989); *Berube*, 7 Mass. App. Ct. at 429 (in considering a motion to remove a default judgment, the “discretion of the judge [] is to be applied toward the objective that legal procedure becomes the vehicle for determination of the issues on their merits instead of upon refinements of procedure”). Default judgments are particularly disfavored “where meritorious defenses have been asserted by the

defendant, and where no prejudice has befallen the plaintiff in the consequence of the defendant's failure to answer." *Salloway v. Wood*, 1994 Mass. App. Div. 219, *4.

As described previously, Ms. Williams has at least seven meritorious defenses and counterclaims to this no-fault eviction action, and the Plaintiff has not been prejudiced by her failure to appear. Ms. Williams filed her motion to vacate default less than two weeks after the default judgment issued, and she has paid use and occupancy for the month of November. *See Williams Aff.* at ¶ 12; Motion to Vacate Default, Ex. B. The Plaintiff is a large corporate landlord which does not itself seek to occupy the property. In addition, Ms. Williams has lived in her home for forty years and is elderly and disabled. *See Williams Aff.* at ¶¶ 3-4. In these circumstances, it would be an extreme miscarriage of justice to allow the Plaintiff to recover possession without a determination of its no-fault claim for possession on the merits. *See Berube*, 7 Mass. App. Ct. at 429. All factors and interests considered by the courts in deciding a motion to vacate default judgment weigh strongly in favor of granting Ms. Williams's motion. *See Parrell*, 389 Mass. at 815; *Berube*, 7 Mass. App. Ct. at 429; *Cicchese*, 28 Mass. App. Ct. at 74; *Salloway*, 1994 Mass. App. Div. at *4.

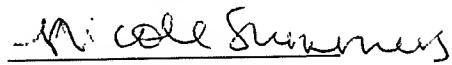
PRAYER FOR RELIEF

WHEREFORE, because Ms. Williams did not receive notice of the scheduled court date, has numerous meritorious defenses and counterclaims to this summary process action, is an elderly and disabled woman who has resided in her home for forty years, and filed her motion to vacate promptly, causing no prejudice to the Plaintiff, she respectfully requests that this Court:

1. Allow this Motion to Reconsider and reverse its Order dated November 5, 2018, thus granting her Motion to Vacate the Default Judgment;
2. Restore this case for trial; and

3. Grant any and all other relief as this Court deems necessary and proper.

Respectfully submitted,
Defendant Juliana Williams
By her attorney for the limited purpose
of this Motion to Reconsider,



Nicole Summers, Esq.

BBO # 691582

The Legal Services Center of
Harvard Law School

122 Boylston Street

Jamaica Plain, MA 02130

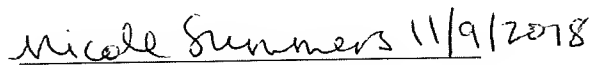
(617) 390-2592

nsunners@law.harvard.edu

Dated: November 9, 2018

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was delivered by email and overnight mail to Plaintiff's attorney, David Frye of Russo & Scolnick, on November 9, 2018.



Nicole Summers

EXHIBIT A

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

SUFFOLK, ss.

**HOUSING COURT DEPARTMENT
EASTERN DIVISION
DOCKET NO: 18H84SP004424**

**GBM PORTFOLIO OWNER LLC,
PLAINTIFF,**

v.

**JULIANA WILLIAMS AND CEZARE
WILLIAMS,
DEFENDANT.**

AFFIDAVIT OF JULIANA WILLIAMS

I, Juliana Williams, hereby state the following:

1. My name is Juliana Williams, and I am a Defendant in the above-captioned no-fault eviction case.
2. I currently live at 498 Norfolk Street, Apt. 203, Mattapan, Massachusetts 02126 (“my home” or “the property”).
3. I have lived at my home for forty years. I moved into my home in 1978.
4. I am sixty-eight years old and I have very limited mobility due to an injury I suffered at the property. In April 2017, I tripped and fell on broken granite on the pathway outside the property. Since that time, my foot and leg have been seriously injured and my mobility has been extremely limited.
5. Because I have such limited mobility, I very rarely leave my home. I only leave my home to attend doctor’s appointments or for other equally important matters. My son,

Cezare Williams, comes to my apartment on Wednesdays and Fridays every week to check my mail, bring me groceries, and assist with other tasks around my home.

6. I did not have a doctor's appointment on Saturday, September 15, 2018 and thus I am nearly certain that I was at home that day. I would have seen or heard if a constable knocked on my door, slid papers under my door, or posted anything on my door that day. No constable or any other person did so. The summons and complaint was not delivered to me on that day nor any other day; I would have seen it easily had it been personally delivered. Further, it is unclear to me how the constable would have entered the building to deliver me the summons since the building is always locked.
7. My son, Cezare Williams, brings me my mail from my mailbox when he visits me on Wednesdays and Fridays. I review my mail carefully. I never received a summons and complaint for this case in the mail.
8. Had I received a summons and complaint, I absolutely would have come to court on the scheduled court date. I also would have immediately reached out for legal assistance, as I was previously represented by Greater Boston Legal Services on a different summary process case in 2016. Because of that case, and because I am involved in ongoing negotiations with the landlord with a tenant association organized by City Life Vida Urbana, I am highly aware of the vulnerability of my tenancy and the importance of attending court.
9. I first learned of this summary process case when I received a notice informing me of default judgment from the Eastern Housing Court. I filed a motion to remove the default, and attended court for the hearing on that motion.
10. I have numerous meritorious defenses and counterclaims to this action.

- a. First, I have defenses and counterclaims for breach of warranty of habitability because I complained about bad conditions including, but not limited to defective walls, electrical outlets, and plumbing, leaking windows, and inadequate heating, and the landlord failed to make repairs.
- b. Second, I have defenses and counterclaims for interference with the right to quiet enjoyment because of the bad conditions mentioned above and because I am a tenant at will paying for utilities without a written agreement with the landlord requiring me to do so.
- c. Third, I have a retaliation defense and counterclaim. This summary process action was initiated in retaliation for my complaints about bad conditions, for bringing a personal injury lawsuit against the landlord for the injury to my foot I suffered at the property, and for participating in organizing activities with City Life Vida Urbana. Because I engaged in these protected activities within six months of the commencement of this summary process action, I am entitled to a presumption of retaliation.
- d. Fourth, I have a security deposit claim. I paid a security deposit of \$225 when I first moved into the property, and I have never received interest on that deposit or a rent reduction. I also have not received a receipt nor any information about where the deposit is being held.
- e. Fifth, I have a last month's rent claim. I paid \$225 for last month's rent when I first moved into the property, and I have never received interest on that deposit or a rent reduction.

- f. Sixth, I have a reasonable accommodation defense and counterclaim because I am disabled. As I described in paragraphs 4 and 5 above, I have very limited mobility due to the injury to my foot and leg I suffered at the property.
- g. Seventh, the Plaintiff is a large corporate landlord and each of the acts I have alleged are unfair and deceptive in violation of G.L. c. 93A.

11. Because of my age and my disability, it would be extremely difficult for me to locate a new apartment and move the belongings I have accumulated over the course of a forty-year tenancy.

12. I have paid use and occupancy for November and I am willing and able to pay use and occupancy during the pendency of this appeal.

Signed under the pains and penalties of perjury this 7th day of November, 2018.

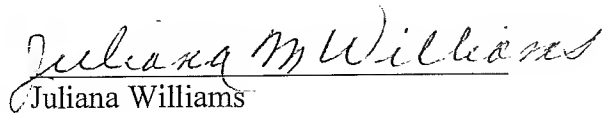

Juliana Williams

EXHIBIT B

Commonwealth of Massachusetts
SUMMARY PROCESS (EVICTIION) SUMMONS AND COMPLAINT

Housing Court Department

Eastern Division

Suffolk ss

☒ Residential
☐ Commercial

Docket No. 18SP4424
(To be added by clerk's office)

Entry Date: 9/24/18

NOTICE OF A COURT CASE TO EVICT YOU - PLEASE READ IT CAREFULLY

ESTA ES UNA NOTIFICACION DE UN CASO EN CORTE PARA DESALOJARTE
FAVOR DE LEER EL MISMO CON CUIDADO

2018 SEP 24
HOUSING COURT
CLERK

TO DEFENDANT(S)/TENANT(S)/OCCUPANT(S): Juliana Williams; Cezar Williams
ADDRESS: 498 Norfolk St. #1203 CITY/TOWN: Mattapan, MA ZIP: 02126

You are hereby summonsed to appear at a hearing before a Judge of the Court at the time and place listed below:

DAY: Thursday DATE: 10/4/18 TIME: 9:00 AM COURT NAME: Edward Brooke Courthouse

COURT ADDRESS: 24 New Chardon Street, Boston, MA ROOM: 10 - 5th floor

to defend against the complaint of PLAINTIFF/LANDLORD/OWNER: GRM Portfolio Owners LLC
c/o Russo, Frye & Associates, LLP of

STREET 2 Oliver St. Suite 612 CITY/TOWN: Boston, MA ZIP: 02109

that you occupy the premises at 498 Norfolk St. #1203 Mattapan, MA 02126

being within the judicial district of this court, unlawfully and against the right of said Plaintiff/Landlord/Owner

because: You failed to vacate the premises despite having been duly served
with a notice terminating your tenancy at will and offering to establish

and further, that \$ _____ rent is owed according to the following account: a new tenancy at a higher rent.

WITNESS: [Signature]

First or Chief Justice
Robert D. Russo, Esq. 434660

Printed Name of Plaintiff or Attorney
Robert D. Russo

Signature of Plaintiff or Attorney
[Signature]

Date of Signature of Plaintiff or Attorney
9/14/18

ACCOUNT ANNEXED (itemize)

plus any monies that
become due and owing

RUSSO, FRYE & ASSOCIATES, LLP
2 OLIVER STREET, SUITE 612
BOSTON, MA 02109

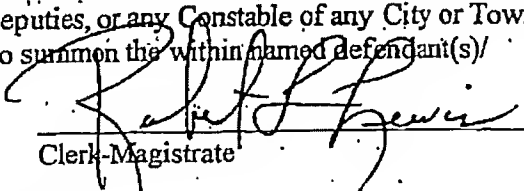
Address of Plaintiff or Attorney
617-542-7700
Telephone Number of Plaintiff or Attorney

NOTICE TO EACH DEFENDANT/TENANT/OCCUPANT: At the hearing on 10/4/18
you (or your attorney) must appear in person to present your defense. You (or your attorney) must also file a
written answer to this complaint. An answer is your response stating the reason(s) why you should not be evicted
and may, in residential cases, include any claims you have against the Landlord. (An Answer Form is available
in the clerk's office whose telephone number is (617) 788-8486.) You must file (deliver or mail)
the answer with the court clerk and serve (deliver or mail) a copy on the landlord (or landlord's attorney) at the
address shown above. The Answer must be received by the court clerk and received by the landlord (or the
landlord's attorney) no later than Monday, 10/1/18, which is the first Monday after the "entry
date" listed above. The entry date is the day by which your landlord must file this complaint with the court clerk.

NOTICE TO EACH DEFENDANT/TENANT/OCCUPANT: IF YOU DO NOT FILE AND SERVE AN ANSWER, OR IF YOU DO NOT DEFEND AT THE TIME OF THE HEARING, JUDGMENT MAY BE ENTERED AGAINST YOU FOR POSSESSION AND THE RENT AS REQUESTED IN THE COMPLAINT.

SI USTED NO REGISTRA O NOTIFICA UNA CONTESTA, O SI USTED NO PRESENTA UNA DEFENSA A LA HORA DE LA AUDIENCIA, UNA SENTENCIA PUEDE SER REGISTRADA EN SU CONTRA PARA POSECCION Y POR LA RENTA REQUERIDA EN EL RECLAMO.

To the Sheriffs of our several counties, or their Deputies, or any Constable of any City or Town within said Commonwealth, GREETINGS: We command you to summon the within named defendant(s)/tenant(s)/occupant(s) to appear as herein ordered.


Clerk-Magistrate

Defendant: Juliana Williams

Officer's Return

Suffolk ss City/Town: Mattapan Date: 9/15/18

By virtue of this Writ, I this day served the within-named tenant or occupant, and summonsed him/her as herein directed, ~~by giving in hand to~~

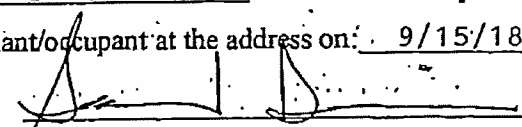
xxx leaving it at 498 Norfolk St. #203, Mattapan, MA 02126 the last and usual place of abode.

A copy of this summons was mailed first class to each tenant/occupant at the address on: 9/15/18

Fees for Service:

Service \$ 25.00
Copy/Attest 1.00
Travel 12.00
Use of Car 12.00
Mailing 1.00

TOTAL \$ 51.00


Signature of Officer

Samuel Desrosiers,
Constable of Boston
Printed Name of Officer
501 Cambridge Street,
Cambridge, MA 02141

Address of Officer

857-285-6901

Telephone Number of Officer

NOTICE TO PLAINTIFF/LANDLORD/OWNER: Have the Officer complete and return above. Service must be made on the defendant(s) no later than the seventh day and not earlier than the thirtieth day before the Monday entry date. This form must be filed in court no later than the close of business on the scheduled Monday entry date. In appropriate cases, proper evidence of notice to quit must be provided to this court upon the filing of this complaint. See Uniform Summary Process Rule 2(d). According to Uniform Summary Process Rule 2(c), the hearing date is the second Thursday after the entry date. In some courts, the hearing date is the second Monday, third Tuesday, third Wednesday, or second Friday.

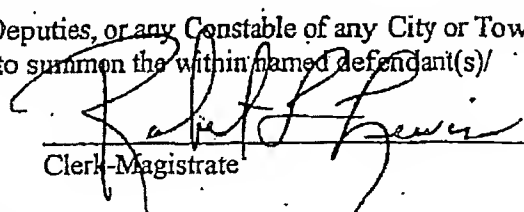
Amended effective: 09/01/05

FOR DEPOSIT ONLY
Boston Housing Court
Sovereign Bank
557/606356
September 26, 2018 10:24 AM
Check Number: 83664
Amount: 1135.00

NOTICE TO EACH DEFENDANT/TENANT/OCCUPANT: IF YOU DO NOT FILE AND SERVE AN ANSWER, OR IF YOU DO NOT DEFEND AT THE TIME OF THE HEARING, JUDGMENT MAY BE ENTERED AGAINST YOU FOR POSSESSION AND THE RENT AS REQUESTED IN THE COMPLAINT.

SI USTED NO REGISTRA O NOTIFICA UNA CONTESTA, O SI USTED NO PRESENTA UNA DEFENSA A LA HORA DE LA AUDIENCIA, UNA SENTENCIA PUEDE SER REGISTRADA EN SU CONTRA PARA POSECCION Y POR LA RENTA REQUERIDA EN EL RECLAMO.

To the Sheriffs of our several counties, or their Deputies, or any Constable of any City or Town within said Commonwealth, GREETINGS: We command you to summon the within named defendant(s)/tenant(s)/occupant(s) to appear as herein ordered.


Clerk-Magistrate

Defendant: Cezare Williams

Officer's Return

Suffolk ss City/Town: Mattapan Date: 9/15/18

By virtue of this Writ, I this day served the within-named tenant or occupant, and summonsed him/her as herein directed, by giving in hand to _____

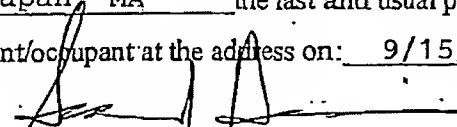
xxxxxx leaving it at 498 Norfolk St. #203, Mattapan MA 02126 the last and usual place of abode.

A copy of this summons was mailed first class to each tenant/occupant at the address on: 9/15/18

Fees for Service:

Service \$ 25.00
Copy/Attest 1.00
Travel 12.00
Use of Car 12.00
Mailing 1.00

TOTAL \$ 51.00


Signature of Officer

Samuel Desrosiers,
Constable of Boston

Printed Name of Officer
501 Cambridge Street,
Cambridge, MA 02141

Address of Officer

857-285-6901

Telephone Number of Officer

NOTICE TO PLAINTIFF/LANDLORD/OWNER: Have the Officer complete and return above. Service must be made on the defendant(s) no later than the seventh day and not earlier than the thirtieth day before the Monday entry date. This form must be filed in court no later than the close of business on the scheduled Monday entry date. In appropriate cases, proper evidence of notice to quit must be provided to this court upon the filing of this complaint. See Uniform Summary Process Rule 2(d). According to Uniform Summary Process Rule 2(c), the hearing date is the second Thursday after the entry date. In some courts, the hearing date is the second Monday, third Tuesday, third Wednesday, or second Friday.

Amended effective: 09/01/05

EXHIBIT C

TRIAL COURT OF THE COMMONWEALTH
HOUSING COURT DEPARTMENT

DIVISION

SUMMARY PROCESS NO.

11181-1448491

GMB Portfolio Owner, LLC. vs. Juliana Williams / Cezare Williams
PLAINTIFF(S) LANDLORD(S) DEFENDANT(S) TENANT(S)

MOTION TO VACATE DEFAULT JUDGMENT (REMOVE DEFAULT)

NOW COMES THE DEFENDANT(S), TENANT(S), AND MOVES THIS COURT TO VACATE
THE DEFAULT JUDGMENT WHICH WAS ENTERED IN THE ABOVE CASE.

1. I DID NOT APPEAR ON THE DATE SUMMONSED BECAUSE: We did not get a summons to come to court. Also Juliana is physically unable to get to court due to ~~neglect~~ neglect of the property which caused her injuries Cezare Williams has been living in Brockton at Glenwood sq apt 3.
2. MY ANSWER TO THE SUMMARY PROCESS ON SP FORM 2 IS ATTACHED.

DATE: _____

SIGNATURE _____

CERTIFICATE OF SERVICE

I, Cezare Williams DEFENDANT IN THE ABOVE ENTITLED
ACTION, HEREBY CERTIFY THAT I AM NOTIFYING PLAINTIFF OF THE FILING OF THE
ABOVE MOTION BY MAILING A COPY THEREOF, POSTAGE PRE-PAID, WITH AT LEAST
THREE (3) DAYS NOTICE TO:

(NAME OF PARTY OR ATTORNEY AND ADDRESS)

HOUSING COURT OF THE
CITY OF BOSTON
2018 OCT 17 A 4 48

(SIGNATURE OF PARTY FILING MOTION)

EXHIBIT D

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

HOUSING COURT DEPARTMENT
EASTERN DIVISION
SUMMARY PROCESS
No. 18H84SP004424

GMB PORTFOLIO OWNER, LLC,
Plaintiff

v

JULIANA WILLIAMS; CEZARE WILLIAMS,
Defendants

ORDER

This matter was before the court on November 1, 2018 with respect to the Defendants' Motion to Vacate Default Judgment. After hearing the motion is **DENIED**

To prevail on a motion to vacate default, the moving party must demonstrate that his or her failure to appear in court on the day of trial was NOT the result of inexcusable neglect and that there is a legal defense to the claim against him or her. The Defendants contend that they did not receive a summons to come to court and that Ms. Williams is physically unable to come to court.

With respect to the allegation that Ms. Williams is physically unable to come, the statement is set forth in the present tense and not limited to her ability to appear on October 4. Ms. Williams was present on November 1, 2018, and the court does not credit the representations relative to her physical incapacity prior thereto.

The Defendants also contend that they did not receive a summons to appear in court. The Summary Process Summons and Complaint was left at the Defendants' apartment, their last and usual place of abode, on September 15, 2018 by constable. The constable also mailed copies to

them, at the subject unit, by first class mail postage prepaid on that same date.

A constable's return of service is *prima facie* evidence of the facts stated therein. *Ryan v Sylvester*, 358 Mass. 18, 20 (1970). To defeat a constable's return of service, a defendant must do more than deny receipt. The Defendants did nothing more than deny receipt and therefore failed to overcome the Plaintiff's *prima facie* evidence of service.

The court finds that the Defendants were properly served with the Summary Process Summons and Complaint in sufficient time to appear on the day of trial.

The court need not reach the question of whether there is a legal defense to the Plaintiff's claim.

For the reasons set forth herein, the Motion to Vacate Default is **DENIED**.

SO ORDERED.



MARYLOU MUIRHEAD
FIRST JUSTICE

November 5, 2018

cc Robert D. Russo, Esquire
Juliana Williams
Cezare Williams